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E.U.I. WORKING PAPER No. 85/147

THE DRAFT TREATY ESTABLISHING THE EUROPEAN UNION

REPORT ON THE FEDERAL REPUBLIC OF GERMANY

by

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February 1985

This paper may be cited as forthcoming in:  
Bieber, Jacqu  , and Weiler (eds.), An Ever-Closer Union:  
A Critical Analysis of the Draft Treaty Establishing the  
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Printed in Italy in February 1985  
European University Institute  
Badia Fiesolana  
50016 S. Domenico di Fiesole (FI)  
Italy



### The European Policy Unit

The European Policy Unit, at the European University Institute, was created to further three main goals. First, to continue the development of the European University Institute as a forum for critical discussion of key items on the Community agenda. Second, to enhance the documentation available to scholars of European affairs. Third, to sponsor individual research projects on topics of current interest to the European Communities. Both as in-depth background studies and as policy analyses in their own right, these projects should prove valuable to Community policy-making.

In October 1984, the EPU, in collaboration with the University of Strasbourg and TEPSA, organised a conference to examine in detail the Draft Treaty Establishing the European Union. This Working Paper, presented at the conference and revised in light of the discussion, will appear in book form later in 1985 along with other studies of the Draft Treaty.

Further information about the work of the European Policy Unit can be obtained from the Director, at the European University Institute in Florence.





## A. CONSTITUTIONAL QUESTIONS

### I. The Ratification Process

The Draft Treaty establishing the European Union, is, in the terminology of the Basic Law, a treaty "with foreign States". It is therefore to be concluded by the Federal President. (Article 59(1)). To be valid, the relevant act of the Federal President requires counter signature by the Federal Chancellor or the appropriate Federal Minister (Article 58(1)). From these provisions, and from their position in Section 5 of the Basic Law, headed "the Federal President", one may conclude that not only the competence to conclude treaties, but also the preparation of the conclusion of the treaty, is a matter for the executive, i.e. for the Federal Government, responsible to Parliament.

Since the draft regulates the political relationships of the Federation, and furthermore relates to objects of federal legislation, it requires the agreement or collaboration of the bodies competent for federal legislation, in the form of a federal law. This means that the Federal Government must first submit the draft

to the Bundesrat, in the usual procedure. The Bundestag and Bundesrat may of course call upon the Government to bring the Draft Treaty before them for debate, but this call does not replace submission by the Federal Government. The draft goes back with the Bundesrat's opinion to the Federal Government, which has a chance to comment on the opinion. It then goes to the Bundestag for the so-called First Reading, in which the Federal Government and spokesmen for the parliamentary groups would set out their basic attitude towards the Treaty. It is then referred to the committees; it may be taken that the Foreign Affairs Committee will draw up the decisive report for the Bundestag, while a dozen or so other committees will be called on to give opinions to the Foreign Affairs Committee (so-called joint consultation). A special problem is presented by the participation of the Europe Committee, which the Bundestag has formed. This Committee, consisting half of German Bundestag members and half of German members of the European Parliament, was set up in 1983 to advise the German Bundestag on fundamental questions of European policy. According to the procedure developed for this matter, the relevant report of the Europe Committee would go not to the full House, but only to the Foreign Affairs Committee, which is competent, and



to certain other committees for joint consultation. The Europe Committee would thus be not on the same level as the classical committees of the German Bundestag, but subordinate to them; nevertheless, through it there would be a possibility of letting the views of German members active in the European Parliament be included in the discussions.

On the basis of the Foreign Affairs Committee's report containing the opinions of the other consultative committees and the result of the consultations on the views of the Europe Committee, the second (and last) debate in the German Bundestag on the law agreeing to the Draft Treaty would be held. No motions for amendments to the Draft Treaty are admissible. The Draft Treaty may only be accepted in toto, or rejected. If the act of acceptance is adopted, it is transmitted to the Bundesrat. The act of acceptance is passed if the Bundesrat consents to it or another of the conditions laid down in Article 78 of the Basic Law is met. It is not passed if an objection by the Bundesrat is not overridden by the Bundestag, or if necessary consent is not secured. Going into detail here would exceed the bounds of this paper. If the act of acceptance is passed according to these provisions, it



is then, after counter signature by the appropriate members of the Federal Government, signed by the Federal President and published in the Federal Law Gazette.

Summarizing, it may be said that the joint action of the Federal Government, Bundestag, Bundesrat and Federal President is necessary, to pass an act of acceptance of the Draft Treaty establishing the European Union.

II. Is amendment of the Basic Law necessary in order to implement the Treaty in the Federal Republic of Germany?

a) Preliminary remark: The Basic Law of the Federal Republic of Germany is a very pro-integration constitution. Even the preamble states that "the German People" is "animated by the resolve ... to serve the peace of the world as an equal partner in a united Europe". Again, Article 24 says that the Federation may by legislation transfer sovereign powers to intergovernmental institutions, may enter a system of mutual collective security for the maintenance of peace, and in doing so will consent to limitations upon its rights to sovereignty.



The text of the preamble, which designates equal partnership of the Federal Republic of Germany in a united Europe as the appropriate form of the promotion of peace expected of the Federal Republic, constitutes not only an encouragement but also an empowerment for the Federal Government, Bundestag and Bundesrat to advance along the path towards the unification of Europe, insofar as the goals of the Draft Treaty do not contradict those of the Basic Law. On a reading of the relevant articles of the Basic Law, particularly the preamble ("to serve the peace of the world"), Article 1(2) (human rights as the basis of peace), Article 9(2) (ban on associations directed against the concept of international understanding, Article 24(2) (maintenance of peace through entering a system of mutual collective security), Article 24(3) (peaceful settlement of disputes between States), Article 26 (ban on acts tending to disturb the peaceful relations between nations, Government responsibility for armaments production), Article 87a (armed forces only "for defence") and the corresponding provisions of the Draft Treaty (preamble "resolved to strengthen and preserve peace and liberty by an ever closer union"), Article 9, 3rd and 4th indents, Article 63(1) and (2), the similarity of objectives and of language leaps to the



eye. From the viewpoint of promoting peace, then, the Basic Law and the Draft Treaty are not in contradiction.

b) The Draft Treaty does not contradict the duty of the constitutional bodies of the Federal Republic of Germany to maintain the national and political unity of the German people and to achieve the unity and freedom of Germany in free self-determination, nor does it withdraw this obligation from them. The existing legal position is to that extent maintained, in particular Article 7 of the Germany Treaty of 1952, whereby the three Western occupying powers undertake to support the reunification of the Germans in a democratic State. Britain and France are co-signatories of that Treaty, and at the same time members of the European Communities. The other Member States have, to the extent that they belong to the North Atlantic Alliance, joined in assuming these obligations (see e.g. the final communiqué of the 16th session of the North Atlantic Council in Paris, 9-11 May 1955, when the Federal Republic of Germany took part for the first time; Europe-Archiv 1955/p. 7927, and finally, the Washington Declaration of the North Atlantic Council of 31 May 1984, point 7; Federal Government Bulletin 1984 No. 65, p. 574).



Ratification of the Draft Treaty would presumably not change anything in this legal position. There are, however, voices in the Federal Republic of Germany calling for this aspect to be incorporated in the Draft Treaty.

c) Article 24 empowers the Federation to transfer the exercise of individual sovereign powers by mere federal legislation, but does not allow abandonment of the Federal Republic of Germany's existence as a State in favour of a European State. It is true that the Draft Treaty provides for the transfer of far-reaching powers in important areas of national life to the European Union within the limits provided therein and according to the procedures provided for. That this would end the member's existence as States is, however, neither deducible from the text nor the declared intention of its authors. A far-reaching transfer of powers ought, however, in view of the Basic Law's attitude towards European unification, seeing the Federal Republic as an equal partner in a united Europe, to be covered by Article 24, which except for the inadmissibility of transferring the core of State power, contains no other limitations in its wording.

The same conclusion is arrived at by Everling (Integration 1/84 p. 12-23, esp. p. 15), Hilf and Schwarze (Eine Verfassung für Europa p. 265 and 32f). Moreover, the Draft Treaty allows the Member States as such far-reaching participation through the European Council and through the Council of the Union within the framework of the European Union. In the case of, for instance, the formation of the Commission, these go beyond the rights allowed the Bundesrat in the constitution of the Federal Republic of Germany. Again, the area of direct control by the European Union seems not to go beyond the stage already reached in the European Communities: the European Union will have specific administrative competence in the coal and steel, agriculture and competition sectors, while all other administration will, as before, continue to lie in the hands of the Member States.

On the whole, then, the advancement and intensification of European integration provided for in the Draft Treaty can be seen as an integration maintaining the existence as States of the Member States and therefore also of the Federal Republic of Germany. Moreover, the fundamental structures of the Federal Republic of Germany ought not to be affected, since this is not possible even by a law



amending the Constitution (Article 79(3)). Here, however, the finding must be that the structures of the European Union not only do not contradict those of the Basic Law, but largely correspond to them. This is true as regards both the promotion of peace and respect for human rights (Preamble and Article 1 of the Basic Law, 3rd indent of the Preamble and Article 4 of the Draft Treaty). Likewise, the precept of democracy is further realised than the extent hitherto achieved in the European Communities (see Article 20(1) and (2) of the Basic Law, Articles 14-19 of Draft Treaty). The same is true for the principle of the social State (Article 20(1) of Basic Law). Again, the principle of constitutionality, or better the rule of law and judicial control (Article 19(4), 20(1) and (3) of Basic Law) has its correspondence in the draft Treaty (Preamble, 3rd indent, and Articles 41-44). The idea of division of powers, too, both between legislature, executive and judiciary and between Union and Member States, is reflected in the Draft Treaty (see in particular part 3, Institutional Provisions, and part 2, The objectives, methods of Action and Competences of the Union, Articles 9-13, which deal in particular with delimiting the powers of the Union and those of the Member States). The principle of the Federal State is



likewise maintained. It is not impossible that some powers of the Union will detract from those of the Lander, but in this context one can hardly speak of a "voiding of the Lander's existence as States" (Tomuschat, Commentary on the Bonn Basic Law, Article 24, No. 68a). It has already been pointed out that the application of Union law remains overwhelmingly a matter for the Member States and therefore, in accordance with the distribution of powers pursuant to Article 30, 83 ff of the Basic Law, largely a matter for the Bundesländer.

### III. Conclusion

From the viewpoint of the Basic Law, no constitutional objections to the overall conception of the draft Treaty or the main features of its elaboration can be raised.

## B. PROSPECTS FOR THE DRAFT TREATY

The Draft Treaty's prospects of becoming law naturally depend on the attitude of important political and social groups. These can at the moment be described as follows:

### I. Parliaments and Parties

a) The German members of the European Parliament have taken the following positions on the Draft Treaty:

i) The German members of the European Parliament, like those of Italy, Belgium and the Netherlands, have agreed to the Draft Treaty by a large majority. To be sure, in the German delegation too consent declined between the first and second votes. Though the CDU/CSU managed to raise the number of ayes by two, so that 37 out of 42 CDU/CSU members voted for the draft, in the second vote, of the SPD members 20 voted aye (-8), none voted no, and 5 abstained (+3). In the FDP too, the number of ayes fell from 4 in the first to 2 in the second vote.

ii) The Bundestag has had two debates on the draft Treaty. The following picture can be drawn from this:

All groups in the German Bundestag, including the Greens, have welcomed the Draft Treaty and referred it to the Committees, with instructions to deliver the opinion asked for by the European Parliament within one year; i.e., the German Bundestag is prepared to enter into the debate on the Draft Treaty and not put the



matter in the pending file. According to Bundestagspräsident Jenninger, the Bundestag will come to a positive conclusion.

The German Bundestag has held two debates on the Draft Treaty; moreover, the group leaders have dealt with the topic, in response to the enquiries by the Association of Former POWs and the "Europa Union". The positions of parliamentary groups apparent from this can be summarized as follows:

CDU/CSU, SPD and FDP welcomed the European Parliament's initiative, without dwelling in detail on the draft Treaty. The representatives of the Greens too welcomed the debate on the draft

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See speech by Dr. Jenninger at the convention of the Union of European federalisms and the Europa Union in Cologne on Dec. 9th, 1984. Bulletin of the Fed. Gov't's press and Information Office 14. Dez. 1984, p. 1363



	Number of seats	Vote	Took part	aye	no	abstained	did not take part
<u>Federal Republic of Germany</u>	81	1	69	67	0	2	12
of which		2	64	59	0	5	17
C D U / 34)		1	35 (28 + 7)	35	0	0	7
C S U 8	42	2	37 (30 + 7)	37	0	0	5
S P D	35	1	30	28	0	2	5
		2	25	20	0	5	10
F.D.P.	4	1	4	4	0	0	0
		2	2	2	0	0	2

C D U Christian Democratic Union  
 C S U Christian Social Union  
 F.D.P. Free Democratic Party  
 S P D Social Democratic Party of  
 Germany





Treaty, but "because it gives a chance to sound the alarm publicly". They want to "engage in a constitutional debate only once the time is ripe for introducing the countermodel to the present European Community" (Mr. Vogt, Bundestag member for Kaiserslautern, at the 68th Session of the German Bundestag, Friday 13 April, p. 4788 and 4790). Similar statements were made in the Bundestag debate on 7 July 1984 and on 7 December 1984.

Minister of State Mertes has declared on behalf of the Federal Government, without prejudicing any later detailed opinion, that he "finds a number of important principles of our own Europe policy in the European Parliament's Draft Treaty" (68th Session, 13 April 1984, p. 4791).

In view of this basically positive attitude by the Federal Government and the groups that have government experience, it can be reckoned that any difficulties in the parliamentary debate, which can never be ruled out, would be overcome to result in a positive opinion from the Bundestag.

The same may also be assumed of the Bundesrat, since the German people would fail to understand differing opinions from the two houses of the Federal Parliament, made up of representatives of the same parties;

\* \* \*

c) This report would however be incomplete if it did not cite a few critical voices. The Draft Treaty did not play the role in the European election campaign that its authors had wished. The view has even occasionally been put forward that Europe's problems cannot be solved by "grand political projects". In the period leading up to the elections, there were critical voices in the press about the European Parliament. Of many examples I shall quote only two: "Imagine there's an election and nobody goes" (Stern, 14 June 1984) and "I am not going to vote today" (Welt am Sonntag, 17 June 1984). It would be astonishing if the authors of these articles showed any more sympathy for the European Parliament's Draft Treaty than for the second direct elections to that Parliament.

There were also critical voices from the academic community. I refer here in particular to the papers and



discussion contributions at the international congress of the Institute for the Study of Integration of the Stiftung Europakolleg, held in Hamburg from 3-5 November 1983 (Schwarze/Bieber, Eine Verfassung für Europa, 1984). Of many examples I shall quote here only Professor Werner von Simon of Freiburg. He quoted former Federal Chancellor Helmut Schmidt with approval: "So we have to identify ourselves with Europe now ... I don't believe in it" (op cit. p.98).

Such statements, of course, did not go unchallenged, as the report of the ensuing discussion shows (op cit. 110-113, esp. 111,112). But scepticism at the draft's ambitions and its chances of realization seem to me to run like a red thread through the whole book.

The same is true of the contributions published in the magazine "Integration" (1/84) on the European Parliament's Draft Treaty. Here too I quote only one example: under the heading "A European Constitution for Visionaries?" Werner Weidenfeld, professor at Mainz University, writes: "The basically important and good idea of working out a European constitution has been given concrete form by the European Parliament in a way

that is questionable as regards both content and procedure" (p. 37).

### III. The Attitude of Public Opinion in General

The attitude of public opinion in general to the European Parliament's project for a European Union is hard to establish, since this question played no part in the election campaign. The problem must therefore be approached by roundabout ways. The Parliament's draft provides, roughly speaking, for the inclusion of new areas of activity among the competences of the European institutions, for increased recourse of majority decisions and for greater power for Parliament. Opinion surveys on these topics do exist.

Firstly, on the European Parliament: in late 1983, 83% of all those questioned knew of the existence of the European Parliament, as against 76% in 1979, with men at 93% being almost 20% ahead of women, at 75%. Similar figures to those for women are recorded for people with only elementary education and for workers, while people with leaving certificates, civil servants and the self-employed show figures even higher than those for men.



The increase in familiarity has not helped, however, towards Parliament's improving image. The number of people who had a good impression of the European Parliament's work practically halved between 1979 and 1983 (42% against 23%). The number of people with a poor impression almost tripled (from 10% to 29%). The number of those with no opinion remained almost constant (48% against 46%).

Against this background, it is hardly surprising that more than half those surveyed took the view that the ultimate decision should lie not with the European Parliament but with the Member State Governments. Nevertheless, 44% took the view that the European Parliament should take binding decisions for all Member countries in a few important areas. The difference between men and women is considerable. 52% of men are in favour of more powers for the Parliament. 46% wish to leave decision-making power to the governments, while 60% of women want this. Only 36% of women want more powers of decision for the Parliament. Against this background it is hardly astonishing that the majority of all those surveyed rejected an all-European government (56%), while only something over a quarter, namely 27%, were in favour. Among men the figures were 35% for, 50%

against. Among women, rejection is more than three times as strong as agreement (61% against 19%).

In line with this is the fact that more than half of those surveyed are not prepared to accept economic disadvantages in order to support poorer countries in the European Community, while 46% are prepared for this. Among men, the figures are equal (49% against 49%). Among women, readiness to accept sacrifice is smaller (44% for, 53% against).

As against this, environment protection in Europe should where necessary be imposed compulsorily. 94% are in favour of this, with only 5% against. There are no significant differences between men and women here.

As far as German reunification is concerned, some 2/3 are of the opinion that Western European unification has no effect on this, i.e. that it neither impedes (as between 16% and 19% believe) nor facilitates (15%) this process. This fits in with the general picture that only 53% of the population regarded the European elections as very important and only 62% intended to take part. The actual electoral participation lay between these two figures, namely at 56.8%.



There are, however, also figures conveying a different picture. Thus, 2/3 of Germans feel themselves to be "European", with European consciousness being especially marked among the middle age-groups, from 30 to 59. It rises with degree of education and professional qualification. People with leaving certificates or higher education, civil servants, the self-employed and professionals feel most European. In line with this, 2/3 of Germans regard membership in the European Community as a good thing. Only 6%, not even one tenth, regard it as a bad thing. Likewise, the break-up of the European Community would be explicitly regretted by 72% of those surveyed, only 6% would welcome it and the rest are indifferent.

These figures are based on two representative surveys carried out by the Sociological Research Institute of the Konrad-Adenauer-Stiftung in October 1983 on 2000 and in March 1984 on 3082 German citizens entitled to vote. As the Konrad-Adenauer-Stiftung itself admits, the results are contradictory. It writes: "Against the background of large numbers of bad reports of the European Community ... the image of Europe among the Federal German population in March 1984 is split. On the one hand, the general agreement with the European

Community and identification with the European idea has strengthened, but on the other, in Germany too it is disappointment and anger ... that determine the assessment". The report continues: "But these two trends are only apparently contradictory. In fact, anger and disappointment at economic developments on the one hand seem to lead to increased support for the process of European integration on the other. The prevalent mood can perhaps be summed up by the slogan: 'high time too!'"

In a more recent assessment of public opinion in Germany Bundestagspräsident Philip Jenninger said the initiative taken by President Mitterrand and Federal Chancellor Kohl had been well received by German public opinion and he concluded: This example shows us that the feeling for European unity is just sleeping. It is immediately revived by every concrete step in the right direction (see op. cit., translation by author).

In such a situation, characterized by contradiction, the future of the project will depend on the determination of the political leadership to make the European Union a reality. The Federal Government and the great majority of the Bundestag have never left any room for doubt that



they are resolved to advance along this path.





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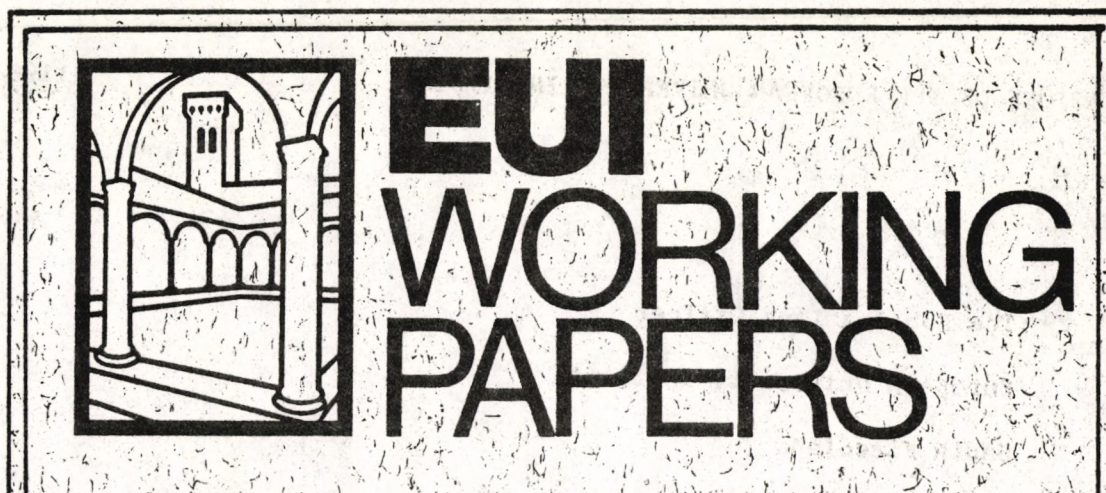
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